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STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF DENTISTRY
DOCKET NO. 009-88

In the Matter of the Suspension)
or Revocation of the License of)

ROBERT J. ELMEZZI, D.D.S.)

To Practice Dentistry in the)
State of New Jersey)

Administrative Action

ORDER ENTERING DEFAULT
AND
IMPOSING SANCTIONS

This matter was opened to the New Jersey State Board of Dentistry by the Administrative Complaint of the Attorney General of New Jersey, by Kathy Rohr, Deputy Attorney General, against Robert J. Elmezzi, D.D.S. (hereinafter, sometimes "respondent"). The Complaint, filed on December 12, 1988, alleged in six counts that respondent engaged in repeated acts of negligence or malpractice in violation of N.J.S.A. 45:1-21(d), engaged in gross negligence or malpractice in violation of N.J.S.A. 45:1-21(c), engaged in the use of fraud, dishonesty, false promise or misrepresentation in violation of N.J.S.A. 45:1-21(b), engaged in professional misconduct in violation of N.J.S.A. 45:1-21(e) and violated or failed to comply with the provisions of acts or regulations administered by the Board in violation of N.J.S.A. 45:1-21(h). Respondent neither filed an answer to the Complaint or entered a plea to the charges in the Complaint.

A hearing in this matter was held on March 1, 1989. Deputy Attorney General Kathy Rohr appeared on behalf of the complainant; respondent did not appear. The following exhibits were admitted into evidence:

- S-1 Affidavit of Service dated December 20, 1988 and signed by Pedro Vasquez, Inspector, Division of Consumer Affairs Enforcement Bureau attesting that the Notice of Hearing and Notice to Enter Plea and the Complaint were personally served on Robert J. Elmezzi, D.D.S. Attached to the Affidavit of Service is a copy of the Notice of Hearing and Notice to Enter Plea and copy of the Complaint bearing the original signature of Robert Elmezzi acknowledging receipt of the documents.
- S-2 Affidavit of Service dated January 13, 1989 and signed by Pedro Vasquez, Inspector, Division of Consumer Affairs Enforcement Bureau attesting that two letters advising Dr. Elmezzi of the date scheduled for the hearing in this matter were personally served on Robert Elmezzi and/or his wife, Nancy Elmezzi. Attached to the Affidavit of Service are copies of the letters advising Dr. Elmezzi of the hearing date bearing the signature of Robert Elmezzi and/or Nancy Elmezzi as well as copies of three memorandum from and between William Gutman, Executive Director, Board of Dentistry and the Division of Consumer Affairs Enforcement Bureau concerning service of the above letters.
- S-3 Letter dated February 10, 1989 from Kathy Rohr, D.A.G. to Robert J. Elmezzi, D.D.S. concerning documents the State intended to enter into evidence and testimony the State intended to offer at the hearing in this matter. Attached to this letter is the Domestic Return Receipt ("Green Card") bearing the signature of R. Elmezzi acknowledging receipt of the letter.
- S-4 Division of Consumer Affairs Enforcement Bureau Report of Investigation dated September 19, 1988 concerning Robert J. Elmezzi, D.D.S.
- S-5 Three page Affidavit of Mary Van Dyk dated April 25, 1988 concerning her dealings with Dr. Elmezzi.
- S-6 Copy of a check (front and back) dated November 11, 1986 in the amount of \$75.00 made payable to Dr. Elmezzi and signed by Mary J. Van Dyk. Attached to the copy of the check is a pre-treatment estimate of benefits form dated November 14, 1986 prepared by Aetna Life & Casualty for JJ/Mary Van Dyk.
- S-7 Patient records of Mary Van Dyk submitted by Alan M. Burton, D.M.D., Mrs. Van Dyk's subsequent treating dentist.

- S-8 Affidavit of Alan M. Burton, D.M.D.
dated May 24, 1988.
- S-9 Letter dated November 17, 1987 from Mary
J. Van Dyk addressed to the Board of Dentistry
concerning her complaint against Dr. Robert J.
Elmezzi. Attached to this letter are copies of
letters dated December 4, 1987, January 12, 1988
and March 9, 1988 from William Gutman, Executive
Director, State Board of Dentistry to Robert J.
Elmezzi requesting patient records for Mary Van Dyk.
- S-10 Copy of Subpoena dated March 14, 1988 signed by
Kathy Rohr, D.A.G. and addressed to Dr. Robert J.
Elmezzi directing production of the patient records
of Mary J. Van Dyk.
- S-11 Letter dated May 8, 1988 from Ruth A. Maas addresse
to the Board of Dentistry concerning her complaint
about Robert Elmezzi. Attached to this letter
are letters dated May 13, 1988 and June 21, 1988
from William Gutman, Executive Director, State
Board of Dentistry to Robert J. Elmezzi requesting
patient records for Ruth A. Maas.
- S-12 Patient records of Ruth Maas submitted by Joseph
A. Balla, D.D.S., Mrs. Maas' subsequent treating
dentist.
- S-13 Letter dated October 20, 1988 from Louise Burney
addressed to the Board of Dentistry concerning
her complaint about Robert Elmezzi. Attached to
this letter is a letter dated October 26, 1988 from
William Gutman, Executive Director to Louise
Burney acknowledging receipt of her complaint and a
letter dated October 26, 1988 from William
Gutman, Executive Director to Dr. Robert Elmezzi
concerning Louise Burney's complaint.

The Deputy Attorney General also presented the testimony of two witnesses: Ellen Pleickhardt, Investigator, Division of Consumer Affairs, Enforcement Bureau; and William Gutman, Executive Director, State Board of Dentistry. Investigator Pleickhardt testified concerning

the interviews she conducted relating to the complaints about Dr. Elmezzi and which she included in her Report of Investigation (S-4). Executive Director Gutman testified that he is the custodian of the records of the Board of Dentistry. As such, he testified that Dr. Elmezzi was no longer registered with the Board and that Dr. Elmezzi's certificate of registration had expired in 1987. Mr. Gutman testified that the Board had received neither an answer to the Administrative Complaint from Dr. Elmezzi nor any response from Dr. Elmezzi to any of the many letters sent to him by the Board. Finally, Mr. Gutman testified that since the Attorney General filed the Administrative Complaint against Dr. Elmezzi in December of 1988, the Board had received three additional consumer complaints concerning Dr. Elmezzi: 1) from Dessel Fehr who stated that she had paid Dr. Elmezzi \$475 for a permanent crown which was never completed and that she could not contact or locate Dr. Elmezzi; 2) from Evelyn Crum who stated that she had paid Dr. Elmezzi \$850.00 for dentures which she never received and that she could not contact or locate Dr. Elmezzi; and 3) from Nancy Usinowicz who stated that Dr. Elmezzi had sold her a dental insurance plan and that she could not contact or locate Dr. Elmezzi.

The Board conducted its deliberations in Executive Session on March 1, 1989 and announced its decision in Public Session on that same date. This Order memorializes the Board's decision announced in Public Session on March 1, 1989.

In consideration of the record herein, the Board makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Robert J. Elmezzi, D.D.S., license number 10717, is a licensed dentist in the State of New Jersey and has been a licensee during all times pertinent hereto.

2. The Administrative Complaint and Notice of Hearing in this matter were served on Dr. Elmezzi on December 19, 1988; service was effected by an Investigator of the Division of Consumer Affairs Enforcement Bureau who hand delivered the Administrative Complaint and Notice of Hearing to Dr. Elmezzi. Dr. Elmezzi acknowledged receipt of the Administrative Complaint and Notice of Hearing by signing a copy of the Notice of Hearing.

3. Dr. Elmezzi failed to file an answer, enter a plea or respond in any manner whatsoever to the Complaint filed herein.

4. Dr. Elmezzi was notified by letter dated January 9, 1989, of a February 1, 1989 hearing date in this matter. The letter was hand delivered on January 11, 1989 by an Investigator of the Division of Consumer Affairs to Robert Elmezzi at 13-10 Eastern Drive, Fair Lawn, New Jersey. Dr. Elmezzi acknowledged receipt of the letter by signing a copy of the letter. Dr. Elmezzi was notified by letter dated January 12, 1989 that the scheduled February 1, 1989 hearing date was adjourned to March 1, 1989. The January 12, 1989 letter was hand delivered on January 12, 1989 by an Investigator of the Division of Consumer Affairs Enforcement Bureau to Nancy Elmezzi, the wife of Dr. Robert Elmezzi, at 13-10 Eastern Drive, Fair Law, New Jersey. Nancy Elmezzi acknowledged receipt of the letter by signing a copy of the letter.

5. Dr. Elmezzi failed to appear at the hearing convened on March 1, 1989. (It should also be noted that Dr. Elmezzi did not appear on February 1, 1989, the date originally scheduled for the hearing).

6. Dr. Elmezzi having failed to file an answer to the Complaint

or appear at the hearing, the allegations of the Complaint are deemed admitted, to wit:

a. For a period commencing in or about November 1986, Dr. Elmezzi undertook to examine, diagnose and treat a patient named Mary Van Dyk. The treatment plan consisted of posts and crowns for teeth numbered 30 and 31. During the period December 1986 through January 1988, Dr. Elmezzi, who had no office staff, scheduled many visits with Mrs. Van Dyk, which he subsequently cancelled. During this period (December 1986 through January 1988) Mrs. Van Dyk made numerous and frequent unsuccessful efforts to obtain appointments to complete the dental treatment and/or to obtain her dental records in order to have the work completed by another practitioner. Dr. Elmezzi submitted a claim for payment and received \$720.00 in benefits from Aetna Life and Casualty Co. (the patient's insurance carrier) and \$175.00 in fees from the patient prior to providing permanent crowns and completing the treatment.

In March 1988 Mrs. Van Dyk finally consulted with another dentist in order to complete the dental work after having left daily messages on Dr. Elmezzi's answering machine for two weeks to which there was no response. Dr. Elmezzi failed to complete the dental work he undertook to perform for Ms. Van Dyk; submitted a claim for payment and accepted payment prior to completion; and repeatedly failed to respond to Ms. Van Dyk's requests for appointments and records.

b. For a period commencing in or about September 1987, Dr. Elmezzi undertook to treat a patient named Ruth Maas. The treatment plan consisted of a crown on tooth number 2. During the period October 1987 through May 1988, Ms. Maas experienced numerous cancelled appointments by Dr. Elmezzi who provided excuses that included family and personal illness and emergencies. In an effort to obtain the permanent crown, Ms. Maas made an unannounced visit to Dr. Elmezzi's office on or about May 4, 1988. Dr. Elmezzi was packing in preparation for moving

but would not provide his new address. Dr. Elmezzi advised Ms. Maas that he would mail her the permanent crown. Ms. Maas had no dental insurance, but she paid Dr. Elmezzi \$350.00 for the crown which was never provided. Dr. Elmezzi failed to complete the dental work he undertook to perform for Ms. Maas, accepted payment for work not completed; and repeatedly failed to respond to Ms. Maas' need for appointments to complete the work.

c. On or about May 27, 1988, Ms. Maas consulted Joseph Balla, D.D.S. in order to have her dental treatment completed. Despite numerous efforts, Dr. Balla was unable to obtain the dental records of Ms. Maas from Dr. Elmezzi. In addition, Dr. Elmezzi failed to return any of the messages left on his answering machine by Dr. Balla. Dr. Elmezzi failed to respond to Dr. Balla's request for Ms. Maas' patient records.

d. In or about October 1988 a patient of Dr. Elmezzi's named Louise Burney attempted to obtain her dental records by written request to the respondent. After being a patient of Dr. Elmezzi for many years, Ms. Burney stated that the respondent seemed to disappear. She received no response to her records request. Dr. Elmezzi failed to respond to Ms. Burney's requests for her dental records.

e. The Board received the complaint of Mary Van Dyk against Dr. Elmezzi in or about November 1987. By letters dated December 4, 1987, January 12, 1988 and March 9, 1988, the Board requested a copy of any and all patient records from Dr. Elmezzi. Dr. Elmezzi failed to respond or to provide the Board with the requested information.

f. The Board received the complaint of Ruth Maas against

Dr. Elmezzi in or about May 1988. By letters dated May 13, 1988 and June 21, 1988, the Board requested a copy of any and all patient records from Dr. Elmezzi. Dr. Elmezzi failed to respond or to provide the Board with the requested information.

g. The Board received the complaint of Louise Burney against Dr. Elmezzi in or about October 1988. By letter dated October 26, 1988, the Board advised Dr. Elmezzi of his responsibilities pursuant to the patient record rule (N.J.A.C. 13:30-8.8(c)). Dr. Elmezzi failed to respond or to provide the requested records.

h. On March 25, 1988, Dr. Elmezzi was personally served with an administrative action subpoena for patient records regarding the treatment rendered to Ms. Van Dyk. Dr. Elmezzi failed to respond to the subpoena or to provide the requested records.

i. On or about October 20, 1988, Dr. Elmezzi was personally served with an administrative action subpoena directing his appearance at an investigative inquiry before the Board on November 16, 1988. Dr. Elmezzi failed to appear before the Board on November 16, 1988.

j. Dr. Elmezzi has failed to renew his current certificate of registration to practice dentistry since 1987. Dr. Elmezzi rendered dental services while not registered to do so for patients including, but not limited to, those patients mentioned herein.

k. Dr. Elmezzi permitted his D.E.A. and C.D.S. registrations to expire in 1987 and 1984 respectively and has thus failed to maintain current D.E.A. and C.D.S. registrations.

7. After the Administrative Complaint was filed against Dr. Elmezzi in December of 1988, the Board received additional

complaints about him from other patients (including Dessel Fehr, Evelyn Crum and Susan Usinowicz).

CONCLUSIONS OF LAW

1. Dr. Elmezzi received sufficient notice of the charges against him and was afforded an opportunity to be heard on those charges.

2. Dr. Elmezzi's failure to complete the dental work he undertook to perform for patient Van Dyk, his submission of a claim for payment and acceptance of payment prior to completion of the work on patient Van Dyk and his repeated failure to respond to patient Van Dyk's requests for appointments and records constitutes repeated acts of negligence or malpractice in violation of N.J.S.A. 45:1-21(d), gross negligence or malpractice in violation of N.J.S.A. 45:1-21(c), use of fraud or misrepresentation in violation of N.J.S.A. 45:1-21(b), and professional misconduct in violation of N.J.S.A. 45:1-21(e).

3. Dr. Elmezzi's failure to complete the dental work he undertook to perform for patient Maas, his acceptance of payment for work not completed on patient Maas, and his repeated failure to respond to patient Maas' need for appointments to complete the work constitutes repeated acts of negligence or malpractice in violation of N.J.S.A. 45:1-21(d), gross negligence or malpractice in violation of N.J.S.A. 45:1-21(c), use of dishonesty and false promise in violation of N.J.S.A. 45:1-21(b), and professional misconduct in violation of N.J.S.A. 45:1-21(e).

4. Dr. Elmezzi's failure to respond to Dr. Balla's request for Ruth Maas' patient records and his failure to respond to

Louise Burney's requests for her dental records constitutes violations of N.J.A.C. 13:30-8.8(c) [the "patient record rule"] and Dr. Elmezzi has therefore violated or failed to comply with the provisions of an act or regulation administered by the Board in violation of N.J.S.A. 45:1-21(h).

5. Dr. Elmezzi's failure to respond to the repeated requests of the Board for patient records in response to patient complaints (patients Van Dyk, Maas and Burney) and his further failure to respond to a lawful subpoena for patient records (Van Dyk) constitutes professional misconduct in violation of N.J.S.A. 45:1-21(e).

6. Dr. Elmezzi's failure to appear at an investigative inquiry pursuant to a lawful subpoena constitutes professional misconduct in violation of N.J.S.A. 45:1-21(e).

7. Dr. Elmezzi's failure to renew his current certificate of registration to practice dentistry since 1987 constitutes a violation of N.J.S.A. 45:6-10 and Dr. Elmezzi has therefore violated or failed to comply with the provisions of an act or regulation administered by the Board in violation of N.J.S.A. 45:1-21(h).

8. Dr. Elmezzi's rendering of dental services while not registered to do so for patients including, but not limited to, the patients named herein constitutes a violation of N.J.S.A. 45:6-13 and Dr. Elmezzi has therefore violated or failed to comply with the provisions of an act or regulation administered by the Board in violation of N.J.S.A. 45:1-21(h).

9. Dr. Elmezzi's failure to maintain current registrations

for D.E.A. and C.D.S. as required of licensees constitutes a violation of N.J.S.A. 45:1-21(h) in that Dr. Elmezzi has violated or failed to comply with the provisions of an act or regulation administered by the Board.

DISCUSSION

As shown by the testimony and the documents submitted at the hearing in this matter, Dr. Elmezzi has repeatedly and totally failed or refused to correspond, communicate or cooperate with his patients, fellow dentists or the Board of Dentistry. Not only do Dr. Elmezzi's actions completely obstruct and frustrate the Board's ability to carry out its statutory duty to protect the public, but these actions evidence a pattern of neglect of his patients' health, safety and welfare. The Board can neither countenance Dr. Elmezzi's flouting of its regulatory authority nor ignore the harm or significant potential for harm to patients presented by Dr. Elmezzi's conduct. Consequently, and for the foregoing reasons,

IT IS ON THIS 15th DAY OF March, 1989,

HEREBY ORDERED THAT:

1. A default be and is hereby entered against Robert J. Elmezzi, D.D.S.
2. The license of Robert J. Elmezzi, D.D.S., to practice dentistry in the State of New Jersey is hereby revoked.
3. Robert J. Elmezzi, D.D.S., shall remove and dispose of any and all dental equipment, appliances, tools, instruments, medications, or dental products which are in his possession at any location. Dr. Elmezzi shall sell or dispose of all such items through a legitimate dealer in dental supplies or to a New Jersey licensed dentist. Dr. Elmezzi shall submit to the Board bills of

sale, receipts or other documentation verifying the disposal of all such items no later than thirty (30) days after the entry date of this Order.

4. Robert J. Elmezzi, D.D.S., shall make available to his patients their patient records, including models and radiographs. Dr. Elmezzi shall advise the Board within fourteen (14) days of the entry date of this Order of the location of the patient records and of the address where patients may contact him to obtain their records.

5. Robert J. Elmezzi, D.D.S., shall make restitution to those named below and in the amounts set forth below within thirty (30) days of the entry date of this Order:

- a. Mary Van Dyk - \$175.00
- b. Aetna Life and Casualty
Co. (Ms. Van Dyk's
insurance carrier) - \$720.00
- c. Ruth Maas - \$350.00

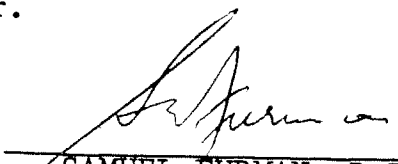
Dr. Elmezzi shall submit three separate certified checks or money orders made payable to those named above in the amounts stated above to William Gutman, Executive Director, State Board of Dentistry, 1100 Raymond Boulevard, Newark, New Jersey 07102.

6. Robert J. Elmezzi, D.D.S., shall make restitution to any and all other patients with verified and legitimate complaints, including, but not limited to, Dessel Fehr, Evelyn Crum and Nancy Usinowicz. Demand for restitution shall be made of Dr. Elmezzi by way of the certification of the Executive Director of the Board specifying the amount of restitution and to whom restitution must be paid. Dr. Elmezzi shall make restitution

to those specified within thirty (30) days of his receipt of the Executive Director's certification; provided, however, that Dr. Elmezzi may request a hearing, limited to the issue of restitution, within ten (10) days of his receipt of the Executive Director's certification. Dr. Elmezzi's failure to request a hearing within ten (10) days will result in restitution being ordered in the amount set forth in the Executive Director's certification.

7. This order is effective upon entry. This Order shall be personally served on Robert J. Elmezzi, D.D.S., by a representative of the Board. Dr. Elmezzi shall surrender any and all wall certificates, including but not limited to, his dentistry license, D.E.A. registration and State C.D.S. registration to the Board representative who serves this Order upon him. In the event that personal service of this Order cannot be effected, this Order shall be served on Dr. Elmezzi by both regular mail and by certified mail, return receipt requested to his last known address. In that instance, Dr. Elmezzi shall submit any and all wall certificates, as above, to the Board of Dentistry at 1100 Raymond Boulevard, Room 321, Newark, New Jersey 07102.

8. In the event that Robert J. Elmezzi, D.D.S., fails to comply with any provision of this Order, the Division of Law is authorized to pursue whatever remedies are available in the Superior Court of New Jersey to enforce this Order.



SAMUEL FURMAN, D.D.S.
PRESIDENT
STATE BOARD OF DENTISTRY